**SCOTT & ENGLISH (M) SDN. BHD.**

**v.**

**LEIKIE REFRIGERATION & STAINLESS STEEL INDUSTRIES SDN. BHD. & 2 ORS.**

HIGH COURT, KUCHING
DATUK CHONG SIEW FAI J.
[SUIT NO. KG 111 OF 1991]
22 JULY 1993

***PRACTICE & PROCEDURE: Senior Assistant Registrar ordered stay of execution - Order drawn up, passed and entered - Whether Senior Assistant Registrar had jurisdiction to vary the order - Whether Senior Assistant Registrar was functus officio.***

The plaintiff obtained summary judgment in a claim brought against the defendants for goods sold and services rendered. The judgment was stayed pending the outcome of the trial of the counterclaim of the first defendant or further order. The order as granted was drawn up, passed, sealed and entered.

The plaintiff subsequently applied for variation of the order and the Senior Assistant Registrar allowed the application and varied the order. The defendants appealed on the ground that the Senior Assistant Registrar had no jurisdiction to vary the order.

**Held:**

**[1]** The Senior Assistant Registrar had no jurisdiction to vary or amend the already perfected order as he was *functus officio*. The words "or further order" in the perfected order did not authorise the Senior Assistant Registrar to vary the order as he did.

**[2]** Even if the plaintiffs' contention that the words "or further order" meant or were equivalent to "liberty to apply" was correct, it did not confer a right to ask the Court to vary the order.

*[Appeal allowed. Varied order set aside. Taxed costs of the application and the appeal to the defendants].*

**Cases referred to:**

*Re V.G.M. Holdings Ltd. [1941] 3 AER 417* ***(refd)***
*Cristel v. Cristel [1951] 2 KB 725* ***(refd)***

*For the plaintiff - T.O. Thomas; M/s. Thomas & Co.*
*For the defendants - N.C. Jie; M/s. Jee Nyuk Choo & Co.*

**JUDGMENT**

**Chong Siew Fai J:**

This is an appeal by the defendants against the decision of the learned Senior Assistant Registrar varying an order made on 25 January 1992.

Briefly, the facts are as follows:

The plaintiff sued the 1st defendant as principal debtor and the 2nd and the 3rd defendants as guarantors for the payment of a total sum of RM138,500 and further interest on goods supplied and services rendered. The defendants delivered a defence while the 1st defendant also counterclaims a sum of RM16,613.50 and damages for breach of contract. By an O. 14 application, the plaintiff successfully obtained an order dated 25 January 1992 for summary judgment as claimed in the statement of claim. The order included, *inter alia*,

> ... that execution of this judgment be stayed pending the outcome of the trial of the counterclaim or further order.

The order as granted is clear and unequivocal that is, execution by stayed pending the outcome of the trial of the counterclaim or further order. The order was drawn up, passed, sealed and entered.

About 1 $^{1}/_{2}$ months later, the plaintiff, by a summons-in-chambers dated 9 March 1992 applied to set aside the part of the order on execution quoted above or to have the same substituted by the following words:

> It Is Also Hereby Ordered that execution of part of this judgment to the extent of RM16,613.50, being the amount claimed by the 1st defendant by its counterclaim, be stayed pending the outcome of the trial of the counterclaim or further order.

The defendants objected to the application.

After hearing the arguments, the learned Senior Assistant Registrar allowed the application on 24 October 1992 and ordered, *inter alia*,

> that the order herein dated 25 January 1992, be varied by substituting the following words, that is, "It Is Also Hereby Ordered that execution of part of this judgment to the extent of RM16,613.50, being amount claimed by the 1st defendant by counterclaim, be stayed pending the outcome of the trial of the counterclaim", in place of the last three lines of the said order of 25 January 1992.

It is against this order of 24 October 1992 that the defendants appeal.

I consider it necessary to deal only with the power of the learned Senior Assistant Registrar to make this order of 24 October 1992 as he did. Since the order dated 25 January 1992 had been drawn up, passed, sealed and entered, had he, who granted the order, the jurisdiction to vary it by the subsequent order of 24 October 1992? For the plaintiff Mr. Thomas contented that the learned Senior Assistant Registrar had because of the wording "or further order" contained in the first order of 25 January 1992 and that the term "or further order" meant with liberty to apply. With respect, I am unable to agree. In my opinion the learned Senior Assistant Registrar was *functus officio*. *Re V.G.M. Holdings Ltd.* [1941] 3 AER 417. If the plaintiff was not satisfied with the part of the order, it should have appealed (which it did not) or steps to vary should have been timely taken before the order was perfected. I do not think the words "or further order" in the order of 25 January 1992 authorised the learned Senior Assistant Registrar to **vary** the order as he did. It may be that another order may be made or that the circumstances of the case (e.g.. that the judgment of the plaintiff's claim far exceeding the 1st defendant's counterclaim) might well justify the making of a further order. But that is quite different from **varying** the said order of 25 January 1992 as the learned Senior Assistant Registrar did.

As regards the contention that the words "or further order" meant or were equivalent to "liberty to apply", even if this is correct, it did not confer a right to ask the Court to vary an order. *Cristel v. Cristel* [1951] 2 KB 725.

The learned Senior Assistant Registrar, in my opinion, had no jurisdiction to vary or amend the already perfected order of 25 January 1992. The appeal is allowed. The order of 24 October 1992 is set aside.

Costs of and incidental to the plaintiff's summons dated 9 March 1992 including the hearing thereof and the costs of this appeal be taxed, if not agreed, and paid by the plaintiff/respondent to the defendants/appellants.

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**SEGAR RESTU (M) SDN. BHD.**

**v.**

**WONG KAI CHUAN & ANOR.**

HIGH COURT, TAIPING
DATO' HJ. ABDUL MALIK BIN HJ. ISHAK JC
[CIVIL SUIT NO: 22-7 OF 1993 (T)]
4 SEPTEMBER 1993

***CONTEMPT OF COURT: Ex parte application by plaintiff against first defendant to commit him for contempt - Subject matter is immovable property - Injunction obtained by plaintiff against first defendant to restrain him or his servant/agent from entering or trespassing into the said land - Whether prima facie case for contempt made out against first defendant - Standard of proof beyond reasonable doubt - Whether injunction order should contain penal notice.***

This was an application by the plaintiff for an order of committal against the first defendant for contempt of court.

**Held:**

**[1]** It is trite law that a regular order of this Court must be respected and obeyed. The Court order is regular and being so, it can only be set aside by an appellant Court upon appeal, if there is one to which an appeal lies. In short, an order by a Court of competent jurisdiction, like this Court, must be obeyed unless and until it has been set aside or varied.

**[2]** The Court order was not only regular but it was both clear and unambiguous. From the recital of the facts, it is beyond dispute that the injunction was violated by the first defendant. That this Court has the power to deal with contempt of this nature is beyond question.

**[3]** The facts in the present application are clear as crystal and for fear of being repetitive, the affidavits of both parties clearly point to the breaches of the Court order by the first defendant beyond all reasonable doubt. The affidavit of the first defendant shows that he had acted under the guise and pretence of ignorance when he entered Lot 76. The truth simply oozed out from the affidavits of both parties.

The first defendant had blatantly violated the Court order and hence, is in contempt of Court.

However, the first defendant who was present in Court had through his Counsel shown